

**AGREEMENT BETWEEN
MT. DIABLO UNIFIED SCHOOL DISTRICT
AND INDEPENDENT CONTRACTOR**

THIS AGREEMENT is made this 5th day of October, 2010, by and between the Mt. Diablo Unified School District (hereinafter "District") and Newcomb Anderson McCormick (hereinafter "Contractor").

District hereby engages Contractor to render described services under the terms and conditions of this Agreement.

1. Performance of Services

- (a) Contractor agrees to perform the services described on Exhibit "A" (hereinafter "Services") on page 4 of this Agreement as an independent contractor. Contractor will determine the means, manner, method, and details of performing the Services. Contractor shall be responsible for providing the materials, tools, transportation, and workspace necessary for the performance of the services. Contractor may, at Contractor's own expense, use non-District employees to perform the Services under this Agreement. Subcontractors may be used with the written approval of the District only.
- (b) Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of the District. Contractor shall be solely responsible for the professional performance of the services, and shall receive no assistance, direction, or control from District. Contractor shall have sole discretion and control of Contractor's services and the manner in which they are performed.

2. Compensation. District agrees to compensate Contractor for the performance of the Services on the following basis:

\$ 33,660.00 total fee for Services

The basis of the fee for Services shall be as follows:

- a. \$ _____ per hour,
b. \$ _____ per day, or
c. \$ _____ per engagement.

Check one:

X Partial Payments: Contractor shall invoice District on a monthly basis or as agreed to for all hours worked pursuant to this Agreement.

Payment in Full: Contractor shall be paid upon completion of services after obtaining originator's signature at the bottom of this contract, indicating that services have been performed.

Contractor shall be responsible for all expenses incurred in association with the performance of the Services.

3. Term and Termination. This Agreement will become effective on May 3, 2010. This Agreement will terminate upon the completion of the Services or when terminated as set forth below.

Either party may terminate this Agreement at any time by giving thirty (30) days written notice to the other party. Should either party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may terminate this Agreement by giving written notice to the breaching party. Termination shall be effective immediately on receipt of said notice.

4. Relationship of the Parties. Contractor enters into this Agreement as, and shall continue to be, an independent contractor. Under no circumstances shall Contractor be considered an employee of District within the meaning of any federal, state, or local law or regulation including, but not limited to, laws or regulations governing unemployment insurance, old age benefits, workers' compensation, industrial illness or accident coverage, taxes, or labor and employment in general. Under no circumstances shall

Contractor look to District as his/her employer, or as a partner, agent, or principal. Contractor shall not be entitled to any benefits accorded to District's employees, including, without limitation, workers' compensation, disability insurance, vacation, or sick pay. Contractor shall be responsible for providing, at Contractor's expense, and in the Contractor's name, disability, workers' compensation or other insurance, as well as licenses and permits usual or necessary for conducting the Services hereunder.

Contractor shall pay, when and as due, any and all local, state and federal income or other taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide District with proof of said payments upon demand. Contractor hereby indemnifies District for any claims, losses, costs, fees, liabilities, damages, or injuries suffered by District arising out of Contractor's breach of this Section.

5. Fingerprinting and Criminal Records Check of Contractor's Employees. Contractor shall comply with the provisions of Education Code §45125.1 regarding the submission of fingerprints to the California Department of Justice and the completion of criminal background investigations of the contractor and/or its employees. Contractor shall not permit any employee to have any contact with District pupils until such time as Contractor has verified in writing to the governing board of the District that such employee has not been convicted of a felony, as defined in Education Code §45125.1.
6. Rules and Regulations. All results and regulations of the Board of Education and all federal, state, and local laws, ordinances and regulations are to be observed strictly by Contractor pursuant to this Agreement.
7. Indemnification. Contractor shall and does hereby indemnify, defend, and hold harmless District, and District's officers, employees, agents and representatives from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities and damages, including, without limitation, interest, penalties, and reasonable attorneys fees and costs, that District may incur or suffer and that arise, result from, or are related to any breach or failure of Contractor to perform any of the representations, warranties, and agreements contained in this Agreement.
8. Ownership of Designs and Plans. Contractor agrees that all designs, plans, reports, specifications, drawings, schematics, prototypes, models, inventions and all other information and items made during the course of this Agreement and arising from the Services shall be owned by and assigned to District as its sole and exclusive property.
9. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by telegram, overnight delivery service, or facsimile transmission, addressed as follows:

<u>DISTRICT</u>	<u>CONTRACTOR</u>
Mt. Diablo Unified School District	Name: Newcomb Anderson McCormick
1936 Carlotta Drive	Address: 201 Mission Street, Ste 2000
Concord, CA 94519-1397	San Francisco, Ca 94105
Attn: Superintendent	Phone: (415) 896-0300
	Fax: (415) 896-1900
	Tax ID #:

Any notice personally given or sent by telegram or facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

10. Entire Agreement of Parties. This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both parties.
11. California Law. This Agreement shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Contra Costa County, California.

12. Attorneys' Fees. If either party files any action or brings any proceedings against the other arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to its costs or attorneys' fees.
13. Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

MT. DIABLO UNIFIED SCHOOL DISTRICT

CONTRACTOR:

By: _____
Budget Administrator Date

By: _____
Date

Title: _____

Title: _____

Authorized by: _____
Assistant or Associate Superintendent Date

Approved: _____
Assistant Superintendent of Personnel Date

TO BE COMPLETED BY DISTRICT BUDGET ADMINISTRATOR

- It is my determination that this contractor is not required to comply with Ed. Code §45125.1 regarding the submission of fingerprints to the Department of Justice.

OR

- This contractor is subject to the requirements of Ed. Code §45125.1 and will not begin services until I have received evidence that the Department of Justice has completed its criminal background investigation.

Administrator's Signature Date

Upon completion of Services, sign below and forward original contract to Fiscal Services for payment.

Originator's Signature Date

Phone

Distribution
original: Fiscal Services for payment
copy: Contractor
copy: Originator/Budget Administrator

Budget Code

*Additional forms may be obtained from the offices of the Assistant Superintendent of Elementary Education and the Associate Superintendent of Educational Services or the Fiscal Services web site:
www.mdusd.k12.ca.us/fiscal/pdf/contract.pdf*

EXHIBIT A

LIST OF SERVICES TO BE PERFORMED BY CONTRACT

SEE ATTACHED

Services of Contractor arranged by

Signature

Department / School



Proposal Evaluation and Contract Negotiation Assistance Proposed Scope of Work

October 5, 2010

#	Task	Description	Estimate*	
			Hours	Cost
1	Proposal Evaluation	<ul style="list-style-type: none"> • Preliminary review of proposals to determine technical compliance with specifications • Assessment of proposed equipment, PV system design, and layout • Evaluation of Design-Build Project Team, project implementation approach, and ability to meet schedule • Identification of problem areas and areas of ambiguity for follow-up • Participate in Proposal Review Committee meetings, meetings with District staff, and Board meetings, as needed. • Develop documentation and presentations 	44	\$7,480
2	Financial Modeling	<ul style="list-style-type: none"> • Review and validate proposer production models, including reasonableness of outputs and assumptions • Develop tariff engine to assess energy savings impacts of proposed systems • Create financial model to assess costs, benefits, and net impacts of solar proposals • Work with proposers and Proposal Review Committee as needed to obtain clarifications, identify missing data, and review the financial model 	64	\$10,880
3	Contract Negotiation Support	<ul style="list-style-type: none"> • Assist the District and the legal team with the contract negotiation phase with selected proposers, including negotiation strategies, economic and performance targets, schedules, and developing and reviewing terms and conditions • Identify cost drivers for negotiations • Review any changes to proposal based on negotiations prior to contract award • Participate in negotiation process as requested by District • Provide recommendations and assist District with final decisions related to contract execution 	90	\$15,300
Total				\$33,660

* We propose to be reimbursed on a time and materials basis, according to the billing rates identified on the following page, in an amount not to exceed our total estimate.



Proposal Evaluation and Contract Negotiation Assistance Proposed Personnel

October 1, 2010

Russell H. Driver, a Senior Program Manager, will lead this engagement and oversee the development of the technical specifications. Currently, Mr. Driver is leading our contract to manage the California Solar Initiative evaluation program. He has over 16 years of experience implementing comprehensive business initiatives and advanced technology projects in complex institutional environments, including statewide solar and energy efficiency programs and projects. Mr. Driver specializes in solar programs, project management, public and private sector procurement, contract negotiation and management, planning and budgeting, systems design and deployment, and facilitation and stakeholder management. Mr. Driver currently serves as a Town of Moraga Planning Commissioner. Mr. Driver holds a Master's Degree in Urban Planning from the University of California Los Angeles and a B.A. in Urban Studies from Stanford University.

Michael K. J. Anderson, P.E., a Principal of Newcomb Anderson McCormick, will be responsible for overseeing the engineering and technical elements of the project. As the firm's Chief Engineer with over 30 years of experience in the energy industry, Mr. Anderson is responsible for the technical quality of all engineering analyses and design, overseeing the engineering staff, and providing technical assistance and training to the engineering staff. Mr. Anderson's extensive expertise includes all aspects of energy engineering projects, including renewable generation, energy efficiency analysis, energy management, PV systems, HVAC systems, central plants, cogeneration, and retrocommissioning. Mr. Anderson holds a Master of Engineering and B.S. in Mechanical Engineering from Harvey Mudd College. He is a registered Professional Engineer (Mechanical) in California.

Matt Sullivan, P.E., LEED AP, a Senior Program Manager, will support the analysis of technical and policy issues related to the review of proposals and negotiation of the solar contract. He has over 25 years experience as a Project Engineer and Project Manager in the energy engineering, renewable energy, power generation, and green building fields. He will coordinate the efforts of the NAM and sub-consultant team and will interface with the contractor on-site as required. Mr. Sullivan is a registered Professional Engineer (Mechanical) in California and a LEED Accredited Professional.

Tia Hansen, an Energy Engineer, will support technical review and system/economic modeling. Ms. Hansen's experience is focused on energy efficiency and renewable engineering, as well as participating in the tracking and organization of projects within the UC-CSU-IOU Partnership program. Ms. Hansen has also played a lead role in managing the PG&E Third-Party Program technical workpaper review and proposal evaluation efforts, and has provided calculations and project analyses for the development of Strategic Energy Plans for the University of California.

Niko Kalinic, an Energy Engineer, will support technical review and system/economic modeling. Mr. Kalinic has been heavily involved with the purchase of a 900kW solar power system for Washington Unified School District from project inception, performing technical due diligence on behalf of the District, and coordinating project implementation and contractor oversight.



**Proposal Evaluation and Contract Negotiation Assistance
Proposed Billing Rates**

October 1, 2010

Classification	Billing Rate (\$/hr)
Principal	\$207
Senior Program Manager/Senior Engineer	\$180
Project Manager/Energy Engineer	\$140
Administrative	\$80

Direct costs, including travel and per diem, printing, special materials, mailing and delivery charges, etc., will be billed at cost without markup.